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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,094	09/12/2003	Kirsty Jane Dodgson	875.092US1	7668
21186	7590	10/16/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			HINES, JANA A	
			ART UNIT	PAPER NUMBER
			1645	
DATE MAILED: 10/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/661,094	Applicant(s) DODGSON, KIRSTY JANE	
	Examiner Ja-Na Hines	Art Unit 1645	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: None.
- Claim(s) objected to: None.
- Claim(s) rejected: 1,8,9,15-19,23 and 25.
- Claim(s) withdrawn from consideration: 2-7,10-14,20-22,24 and 26-43.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


MARK NAVARRO
PRIMARY EXAMINER

The proposed after final amendment will not be entered because it raises new issues that would require further consideration and/or search. The new issues are drawn to the vanA-specific oligonucleotide probe under high stringency conditions hybridizing to a wide variety of sequences which includes, but is not limited to sequences substantially corresponding to SEQ ID NO:3, the complement thereof, or a portion thereof and comprises sequences which include sequences substantially corresponding to SEQ ID NO:3. The after final amendment also recites that the simplified vanA nucleic acid has sequences substantially corresponding to all of SEQ ID NO:2 and 4, and not the 26 and 19 amino acids previously recited. Therefore, the claims are now significantly broader, than previously recited. Furthermore the after final amendment is not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Thus, for at least these reasons, the proposed after final amendments will not be entered.

It is noted that applicants' arguments are drawn to the proposed after final amendments, however those amendments will not be entered and therefore applicants arguments are moot.

The written description rejection of claims 1, 8-9, 15-19, 23 and 25 under 35 U.S.C. 112, first paragraph, is maintained for reasons already of record. The rejection was on the grounds that the instant specification and claims are encompassing currently unidentified portions of the sequences substantially corresponding to nucleotides 851 to 868, 870 to 896 or 898 to 917 or the complements thereof. Therefore, with the exception of specifically named nucleotide sequences, the skilled artisan cannot envision the detailed structure of the portions thereof, thus conception is not achieved until reduction to practice has occurred, regardless of the complexity or simplicity of the method of isolation. Therefore the full breadth of the claims fails to meet the written description provision of 35 USC 112, first paragraph and the rejection is maintained.

The rejection of claims 1, 8-9, 15-19, 23 and 25 under 35 U.S.C. 112, second paragraph, is maintained for reasons of record.

The rejection was on the grounds that the preamble of the claims is drawn to a method to detect vanA in a sample, therefore, the goal of the preamble is not commensurate with the steps of the method that are drawn to a method to detect vanA in a sample and the rejection is maintained.

The phrase "the sequences substantially corresponding to nucleotides...." in the claims is a relative term which renders the claim indefinite. Thus, clarification is required to overcome the rejection.

The rejection of claims 1, 8-9, 15-19, 23 and 25 under 35 U.S.C. 102(b) as being anticipated by Modrusan for reasons already of record. The rejection of claims 1, 8-9, 15-18, 23 and 25 under 35 U.S.C. 102(b) as being anticipated by Petrich et al., is maintained for reasons of record.

The rejection of claims 1, 8-9, 15, and 25 under 35 U.S.C. 102(b) as being anticipated by Arthur et al., is maintained for reasons already of record.

The rejection of claims 1, 8-9, 15, 17-19, 23 and 25 under 35 U.S.C. 102(b) as being anticipated by Bergeron et al., is maintained for reasons already of record.